

HOW TO SET UP

A UCI PART II FUND

DESCRIPTION

A fund set up under Part II of the Luxembourg Law of 17 December 2010 on undertakings for collective investment (UCIs) is an investment fund that can invest in all types of assets. It qualifies as an alternative investment fund (AIF) and can be sold to all types of investors. UCI Part II Funds that have appointed an EU AIFM can market their shares, units or partnership interests via a specific passport to professional investors across the EU.

LEGAL FRAMEWORK

AIFs which are not governed by a specific product law (on SIF, SICAR or RAIF) and not set-up in pure company form are governed by Part II of the Law of 17 December 2010 (2010 Law) as modified by the Law of 10 May 2016 implementing EU Directive 2014/91/EU ("UCITS V").

Moreover, the Luxembourg law of 12 July 2013 on Alternative Investment Fund Managers (AIFM Law) applies.

UCI Part II Funds investing in short-term assets and having distinct or cumulative objectives offering returns in line with money market rates or preserving the value of the investment must further comply with the requirements of Regulation (EU) 2017/1131 on money market funds.

There are a number of additional rules that have to be observed at national and/or EU level (e.g. concerning AML, MiFID, market abuse, derivatives, securities financing transactions and shareholder rights).

LEGAL FORM

A UCI Part II Fund may be constituted as:

- an open or closed ended common contractual fund (*fonds commun de placement* – FCP). The FCP has no legal personality and must be managed by a management company;
- an open or closed ended investment company with variable capital (*société d'investissement à capital variable* – SICAV), or fixed capital (*société d'investissement à capital fixe* – SICAF). The creation of such a corporate entity requires the drafting of instruments of incorporation.

CAPITAL BASE

The net assets of an FCP may not be less than EUR 1,250,000. This minimum must be reached within a period of six months following its authorisation.

The minimum capital of a self-managed SICAV/F may not be less than EUR 300,000 at the time of authorisation.

The capital of any SICAV/F must reach EUR 1,250,000 within six months of its authorisation.

An FCP or a SICAV/F may be set up as a single fund or as an umbrella fund with multiple compartments. The fund and compartments respectively may have an unlimited number of share-/unit classes, depending on the needs of the investors to whom the fund is distributed.

AUTHORISATION AND SUPERVISION

A UCI Part II Fund must be authorised by the *Commission de surveillance du secteur financier* (CSSF) before commencing its activity. Afterwards, it is supervised by the same on an ongoing basis e.g. by means of regular reporting requirements. The CSSF charges an annual fee for its supervisory activity.

The draft documents and information to be submitted to the CSSF – via e-file (see www.e-file.lu) or email (setup.uci@cssf.lu) – for approval are set out in Articles 129-132 and 150-158 of the 2010 Law and Chapter K of IML Circular 91/75 (as modified).

The documents and information are generally compiled and submitted to the CSSF with the assistance of lawyers/ auditors and/or a bank in Luxembourg.

The approval process of a new UCI Part II Fund or additional sub-funds is subject to the payment of a one-off fee.

The CSSF keeps an official list of the authorised UCI Part II Funds that are subject to its supervision. A UCI Part II Fund may start business as soon as authorisation has been granted.

DISCLOSURE REQUIREMENTS AND FINANCIAL REPORTS

A UCI Part II Fund must prepare a fund prospectus, a PRIIP Key Information Document (KID) if retail investors can make investments, an annual report and a semi-annual report. The contents of the prospectus are set out in Schedule A of Annex I to the 2010 law and in Chapter L of IML Circular 91/75 (as modified).

APPOINTMENT OF AN AIFM

UCI Part II Funds are required to appoint an Alternative Investment Fund Manager (AIFM), unless they benefit from the limited exemptions provided by the AIFM law. The AIFM can be established in Luxembourg, in another EU Member State or in a third country. UCI Part II Funds may either appoint an external AIFM (the management company of the fund or a different entity is appointed as AIFM) or choose to be internally managed. In the latter case, the UCI Part II fund will itself be considered as the AIFM and will have to comply with all the legal obligations of the AIFM law.

UCI Part II Funds managed by an authorised EU AIFM benefit from a passport allowing AIFMs to market the fund's shares, units or partnership interests to professional investors within the EU through a regulator-to-regulator notification regime.

A UCITS management company may apply for authorisation as AIFM in order to manage both UCITS and AIFs.

Smaller AIFMs that do not exceed certain thresholds in terms of assets under management have to be registered and must comply with some of the requirements of the AIFM Law, or can decide to opt for a formal authorisation to benefit from the passport.

SPECIFIC ASPECTS: EUVECA AND EUSEF

UCI Part II Funds that qualify as European Venture Capital (EuVECA) or European Social Entrepreneurship (EuSEF) Funds have the option of being subject to the EuVECA or EuSEF regulation, respectively. Both regimes provide a passport that permits the marketing of the fund to EU-based eligible investors.

SERVICE PROVIDERS

A common fund must be managed by a management company, whereas a SICAV/F may either be self-managed or designate a management company. If applicable, the management company of an FCP must draw up the management regulations for the common fund.

Self-managed SICAV/Fs may only manage assets of their own portfolio and may not manage assets on behalf of a third party.

The central administration of a UCI Part II Fund must be in Luxembourg.

A UCI Part II Fund must appoint a Luxembourg depositary which is among other things responsible for the safekeeping of the fund's assets.

The eligible depositaries are Luxembourg established credit institutions, but also Luxembourg established investment firms fulfilling certain requirements laid down by the Law of 5 April 1993 on the financial sector, as amended.

It is also possible to collaborate with a professional depositary of assets other than financial instruments.

The conducting officers of the UCI Part II Fund and of the depositary must be of sufficiently good repute and have sufficient experience in relation to the type of UCI concerned. "Conducting officers" (*dirigeants*) are persons who represent the UCI Part II Fund or the depositary or who effectively determine the conduct of the activities of the UCI.

The annual report must be audited by an authorised independent auditor with appropriate professional experience.

Other typical service providers to a UCI Part II Fund include lawyers, portfolio managers (investment advisers), administrators/ registrars/transfer agents/domiciliation agents, distributors/ nominees, market makers and paying agents.

Useful information sources

www.cssf.lu

Commission de Surveillance du Secteur Financier
(Luxembourg financial supervisory authority)

www.alfi.lu

Association of the Luxembourg Fund Industry